Remarks

Claims 1-21 remain in the case. Favorable reconsideration of the above-identified application in view of the following remarks is respectfully requested.

Allowed Subject Matter:

The allowance of Claims 1-15 and 18-21 is noted and appreciated.

Applicant awaits acceptance of the proposed drawing changes filed with the First Response on September 20, 2005.

Specification Amendment:

The specification amendment of paragraph 21 is a mere correction of a typographical error and does not affect the drawings or add new matter to the application.

Claim Rejections - 35 USC §112, first paragraph:

Claim 16 has been final-rejected under 35 USC §112, first paragraph, as not enabling a person skilled in the art to make and use the invention because the cross member (78) is not claimed with the two "bent" rods (66 & 68).

The cross member (78) of the present application serves to hold the elongated rods (66 & 68) laterally apart with the canopy (65) extending taughtly there-between. Claim 16 is not limited to taught canopies, hence, the cross member (78) is not necessarily required. In other words, one skilled in the art would know how to bend (permanently or otherwise) two rods so that they extend over a spa and are strong enough to support a canopy there-between (tightly or otherwise).

Paragraph 21, lines 7-14 of the specification states (emphasis added in bold):

> "A rigid elongated cross member 78 (as best shown in Figures 6-8) extends between and engages to the two distal ends 72 **maintaining a predefined space** between the rods 66, 68. Preferably, the ends of the rigid cross member 78 engage the respective distal ends 72 of the rods 66, 68 via respective ninety degree fittings or elbows 80. **The cloth-like canopy 65 is stretched over the spa 42 and has a sleeve-like periphery 82 which receives the rods 66, 68 and cross member 78** or otherwise is

engaged generally continuously along the rods and the rigid cross member."

Paragraph 34 also states:

"While the forms of the invention herein disclosed constitute a presently preferred embodiment, many others are possible. It is not intended herein to mention all the possible equivalent forms or ramifications of the invention. It is understood that terms used herein are merely descriptive, rather than limiting, and that various changes may be made without departing from the spirit or scope of the invention as defined by the following claims."

The body of the specification of the present application teaches the best mode as required under 35 USC §112, first paragraph but need not teach every mode or teach what should be apparent to one having ordinary skill in the art. When viewed as a whole, the body of the specification may well be more limited than Claim 16, however, when interpreting enablement under §112 for claim rejection one must look toward the claim itself (not the body of the specification) and to that known to one having ordinary skill in the art, (not the skill of the general public). "A patent need not teach, and preferably omits, what is well known in the art." Spectra-Physics Inc. v. Coherent Inc., 3 U.S.P.Q.2d 1737, 1743 (Fed. Cir. 1987). For instance, Applicant contends that one who installs or designs canopies for a living would know how to secure the canopy to two bent rods (66, 68) without the cross member (78).

As stated by the Court of Appeals for the Federal Circuit in Christianson v. Colt Inds., 3 U.S.P.Q.2d 1241, 1255 (Fed. Cir. 1987), "The `invention' referred to in the enablement requirement of section 112 is the claimed invention." (Emphasis in original.) Thus, reference must be made to the claims in the first instance when determining enablement. Additionally, "a patent is not invalid [as non-enabling] because of a need for experimentation. A patent is invalid only when those skilled in the art are required to engage in undue experimentation to practice the invention." W.L. Gore & Associates, Inc. v. Garlock, Inc., 220 U.S.P.Q. 303, 316 (Fed. Cir. 1983) (citations omitted, emphasis in original).

Hence, Claims 16 and 17 are enabled under §112.

Claim Rejections - 35 USC §102:

Claims 16 and 17 have been final-rejected under 35 USC §102(b) as being anticipated by Durham, U.S. Patent No. 653,621. The Applicant respectfully traverses the rejection.

Although the Durham reference teaches a canopy removal mechanism, it does not teach a cover removal mechanism engaged to a cover and used in conjunction with a canopy or awning. That is, the cover (34) and the canopy or awning (20) of Claim 16 are not one-in-the-same. Moreover, if Durham '621 did teach a cover engaged to a cover removal mechanism (which it does not), it does not teach the relationship between the cover and the awning of Claim 16. That is, Durham '621 does not teach a removed cover with a canopy stretched over the spa (or in the case of Durham '621, stretched over the bed).

Yet further, Durham '621 teaches a "bed canopy removal mechanism" and not the "spa cover removal mechanism" as claimed in Claim 16 of the present application.

"Anticipation under 35 U.S.C. § 102 requires the presence in a single prior art disclosure of each and every element of a claimed invention." Lewmar Marine v. Barient Inc., 3 U.S.P.Q. 2d 1766, 1767 (Fed. Cir. 1987). Consequently, Claims 16 and 17 of the present invention are not anticipated by Durham '621 under USC §102(b).

Summary:

Please review the clerical error amendment for the specification, approve the previously present proposed drawing changes, and reconsider and allow Claims 16-17 in view of the above remarks. Should the Examiner have any further concerns Applicant's attorney, Mr. Burns, requests a phone call.

If it is determined that any fees are due, the Commissioner is hereby authorized and respectfully requested to charge such fees to Deposit Account No. 50-0852.

Respectfully submitted,

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